

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Constance Walker,

Plaintiff,

v.

Commissioner of Social Security,

Defendant.

Decision and Order

**17-CV-1175 (HBS)
Consent**

On March 27, 2019, the Court issued a Decision and Order that vacated the Commissioner's final determination and that remanded the case for further administrative proceedings. (Dkt. No. 27.) On July 31, 2019, in accordance with a stipulation between the parties (Dkt. No. 33), the Court awarded plaintiff attorney fees in the amount of \$6,586.74 under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. (Dkt. No. 34.) One of the conditions attached to the award was that plaintiff potentially would not receive the award, depending on whether she owed any debts to the federal government that were subject to offset under the U.S. Treasury Offset Program.

On March 6, 2020, plaintiff's counsel filed a motion for an award of attorney fees in the amount of \$11,734.75, under 42 U.S.C. § 406(b). (Dkt. No. 35.) Plaintiff's counsel informs the Court, and the Commissioner does not contest, that the EAJA award was in fact offset in its entirety to help satisfy an unspecified debt that plaintiff owed to the U.S. Department of Education. (Dkt. No. 35-5 at 1.) Plaintiff's counsel advises further that on February 18, 2020, the Commissioner issued a Notice of Award, based on a favorable decision, of \$46,939.00 in past-due benefits. Of that amount, the Commissioner withheld 25 percent, or \$11,734.75, to pay any duly approved attorney fee. Plaintiff's counsel has set forth details in the motion explaining the time spent on the case and

how the amount sought is consistent with the attorney-client contract, the amount of time spent on the case, prevailing rates for the type of work performed, and the statutory cap for fees.

The Commissioner takes no position on the motion, since Section 406(b) are paid from the claimant's benefits rather than from agency funds. (Dkt. No. 38.)

After reviewing the motion papers, the Court finds that the request is in fact consistent with statutory authority and with cases that have addressed similar requests. *See generally, e.g., Gisbrecht v. Barnhart*, 535 U.S. 789 (2002); *Wurzer v. Comm'r*, No. 15-CV-6528 CJS, 2019 WL 3821897 (W.D.N.Y. Aug. 14, 2019); *Barone v. Saul*, No. 13-CV-896, 2019 WL 3296616, at *2 (W.D.N.Y. July 23, 2019). Unlike *Wurzer* and *Barone*, no refund of the EAJA award will be necessary since the award was offset. Accordingly, the motion is granted. Plaintiff's counsel is hereby awarded \$11,734.75 in attorney fees under 42 U.S.C. § 406(b).

SO ORDERED.

/s/ Hugh B. Scott
Hon. Hugh B. Scott
United States Magistrate Judge

DATED: April 8, 2020